# INDEX


| | Page No. |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Question presented | 2 |
| Statute involved | 2 |
| Statement | 2 |
| Argument | 10 |
| Conclusion | 13 |


## CITATIONS

Cases:


| | |
|---|---|
| *Baumgartner* v. *United States*, 322 U. S. 665 | 11, 13 |
| *Klapprott* v. *United States*, 335 U. S. 601 | 10 |
| *Knauer* v. *United States*, 328 U. S. 654 | 11, 13 |
| *Schneiderman* v. *United States*, 320 U. S. 118 | 10, 13 |


Statute:


| | |
|---|---|
| Section 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. 738) | 2 |

# In the Supreme Court of the United States

OCTOBER TERM, 1949

---

No. 298

HANS GEISLER, PETITIONER

*v.*

UNITED STATES OF AMERICA

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

### OPINIONS BELOW

The opinion of the Court of Appeals (R. 124-137) is reported at 174 F. 2d 992. The memorandum opinions of the District Court (R. 19-22, 91-92, 94-104) are not reported. The findings of fact and conclusions of law of the District Court appear at pp. 105-106 of the record.

### JURISDICTION

The judgment of the Court of Appeals was entered June 9, 1949 (R. 138), and a petition for rehearing (R. 139-155) was denied July 8, 1949

(R. 157). The petition for a writ of certiorari was filed August 29, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether the findings of the District Court, sustained by the Court of Appeals, that petitioner falsely swore allegiance and committed a fraud in obtaining his certificate of naturalization are supported by evidence sufficient to satisfy the standards of proof prescribed by the applicable decisions of this Court.

### STATUTE INVOLVED

Section 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U.S.C. 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

### STATEMENT

Petitioner, a native of Germany, arrived in the United States in 1926 and resided in Chicago, Illi-

nois, making his living as a cabinet-maker (R. 45). He took the oath of allegiance and was admitted to citizenship in September 1940 (R. 3). He was inducted into the United States Army in April 1941, was transferred to the Enlisted Reserve Corps about eight months later, and was recalled to active duty at Fort Sheridan, Illinois, on January 16, 1942 (R. 46, 78). On April 23, 1942, he was tried by a court-martial for allegedly making disloyal statements on January 27, 1942, to the prejudice of good order and military discipline, found guilty, and sentenced to five years' imprisonment (R. 78).[1] The statements referred to are set forth later in this brief.

In September 1942, the United States instituted proceedings in the United States District Court for the Northern District of Illinois, pursuant to Section 338 of the Nationality Act of 1940, to cancel petitioner's certificate of naturalization, on the ground that he had taken a false oath of allegiance (R. 2-5). To this complaint, petitioner filed an answer stating that he was then confined in the guardhouse at Fort Sheridan, serving a sentence imposed by court-martial; that he was not represented by counsel; and that he did not desire to be so represented (R. 5). He admitted all of the allegations of the complaint, particularly that at the time he took his oath of allegiance and ob-

---

[1] The record indicates that this sentence was later suspended (R. 50).

tained his citizenship, he did not intend to renounce all allegiance and fidelity to the German Reich and that he was not then in fact attached to the principles of the Constitution of the United States (R. 5-6). He consented to an immediate hearing of the case and the entry of an order revoking and setting aside the decree of naturalization (R. 6). Thereafter, at a hearing in open court, he again stated that he did not desire to be represented by counsel and reiterated the admissions of his answer. The Government introduced testimony in support of the allegations in the complaint. The District Court (Holly, D.J.) on November 24, 1942, found that petitioner fraudulently and illegally procured his certificate of naturalization and entered a decree setting aside the decree of naturalization and cancelling the certificate. (R. 7-8.)

In March 1946, when deportation was imminent (see R. 25), petitioner filed a "Petition for Rehearing" (R. 9-13). Briefly, he alleged that at the time of the hearing on the complaint for denaturalization he was confined in the guardhouse (R. 10); that upon review of his court-martial conviction, the Secretary of War entered an order setting aside the conviction and acquitting petitioner (R. 10; cf. R. 50); that the statements upon which the court-martial conviction was based were the sole basis for the denaturalization proceedings (R. 10); that those statements were given and made by him involuntarily (R. 10), induced by the circum-

stances of confinement and statements made and advice given to him by army officers and representatives of the office of the United States Attorney, Chicago, Illinois (R. 10-11); and that in reliance on these representations, he filed his answer admitting the allegations of the complaint (R. 12). He further alleged that the statements in his petition for naturalization were not fraudulent but were true and that he had taken the oath of allegiance in good faith (R. 11). He therefore prayed that the final decree of denaturalization entered on November 24, 1942, be set aside and that a new trial on the merits be granted (R. 12-13). The Government filed a motion to dismiss this petition for lack of jurisdiction (R. 17-18). On June 10, 1946, the District Court filed a memorandum opinion denying the motion (R. 19-22), and on November 7, 1946, an order was entered vacating the final decree of November 24, 1942, and reinstating petitioner's certificate of naturalization (R. 23). On April 21 and June 20, 1947, hearings were had on the original complaint for denaturalization (R. 24 et seq.), and on May 3, 1948, petitioner filed a supplemental answer denying the allegations of the complaint (R. 92-93).

At the trial so held, S. L. De Love, an attorney and a witness on behalf of the government, testified that as Post Intelligence Officer at Fort Sheridan, Illinois, he received petitioner's name with others for screening (R. 29-30), and that on January 24

or 25, 1942, after petitioner had been recalled for active duty (see p. 3, *supra*), he called petitioner to his office. He informed petitioner that he was being investigated, that under the Constitution he need not answer any of his questions, that his answers must be free and voluntary, and that they might be used against him. (R. 30.) De Love further testified that he asked petitioner categorically if he wanted to answer the questions and that petitioner replied in the affirmative (R. 30); that he thereupon asked petitioner various questions (R. 30); that petitioner appeared intelligent and familiar with the English language, expounded the Nazi philosophy (R. 36, 62), and stated as follows: that he did not want to fight against Germany or Japan, that war was nothing but a racket and the United States had no business in it, that it should not fight Germany, that he did not want to be a United States citizen, that he would rather give up his citizenship than fight Germany, and that he admired Hitler as being the greatest man that ever lived and admired his regime and Nazi principles (R. 31). De Love also testified that petitioner stated that he was a member of the National German Alliance but not the Bund (R. 31-32). After petitioner made these statements, De Love testified he sent him away to reconsider them and return (R. 32); that petitioner returned on January 27, 1942, and was warned again of his rights, but that petitioner stated he

still felt the same way and was willing to "get it off [his] chest" (R. 32); that thereupon De Love had the statements taken down in shorthand in affidavit form and transcribed (R. 32); that petitioner was taken to the Post Adjutant, Captain Ure, where he signed the affidavit in Ure's and De Love's presence after being warned again of his rights (R. 33); that he was then taken to the Colonel who went over the matter again (R. 33); and that petitioner was sullen and determined at all times (R. 61). Without objection (R. 45), the affidavit, reading as follows (R. 74-75), was admitted in evidence:

AFFIDAVIT

Hans Geisler being duly sworn under oath deposes and says that he is a member of Company "L" 2d Infantry, Fort Sheridan, Illinois.

Affiant further states that he feels and believes that Germany is justified in its present struggle and is only fighting for its daily bread.

Affiant further states that he hopes that Germany will win over England.

Affiant further states that he has consistently expressed and does have admiration for Hitler and his Nazi Regime.

Affiant further states that he believes that the United States has no business in this war and it is nothing but a capitalist war to make a few people rich.

Affiant further states that he has attended Bund Meetings at 3857 Western Ave., Chicago, Illinois, on the average of once a month for 3 years.

Affiant further states that he hereby refuses to fight or to bear arms for the United States against Germany.

Affiant further states that he hereby refuses to fight or to bear arms against Japan, because to bear arms and to fight against Japan is to fight and bear arms against Germany who is supposed to be America's chief enemy.

Affiant further states that if necessary I am ready to renounce my citizenship papers, rather than to fight against Germany or Japan.

Affiant further states that at the present time he does not intend to fulfill his oath of allegiance to the United States against her enemies Germany, Italy or Japan.

Affiant further states that he does not now belong nor did he ever belong to any club or association except the National German Alliance.

Affiant further states that he has read above and same is true and that he makes this affidavit as his free and voluntary act, that he has been warned of his rights, and that this may be used against him.

Ure corroborated De Love's testimony as to what occurred in Ure's office, adding that before petitioner signed the affidavit, he read the statements to him and determined that they represented peti-

tioner's true feelings and were made voluntarily (R. 39-42, 63).

Petitioner admitted that he signed the affidavit (R. 26-27) and testified that on January 27, 1942, he stated to De Love that he felt that Germany was justified in its struggle and was fighting for its daily bread; that he hoped Germany would win over England and that, if necessary, he was ready to renounce his citizenship rather than fight against Germany (R. 27-28); that he was a member of the National German Alliance (R. 28); that he attended Bund meetings once a month for over three years, but only out of curiosity (R. 28, 59); and that he had a ring with a swastika on it, but had worn it only once and kept it as a souvenir (R. 60). He further testified, although this was denied by De Love and Ure (R. 36-37, 42, 44, 61), that when he signed the affidavit, he thought he was signing a request for a transfer to non-combatant service (R. 47-48, 53, 55), that he was nervous and emotionally upset at that time because De Love had questioned him about his mother and father in Germany and had stated that he might be forced to shoot his parents in order to be a good American (R. 47), and that he did not realize the significance of the contents of the signed statement until he was in the Colonel's office (R. 48, 54). The only other testimony adduced on petitioner's behalf was that of Alma Figge of Chicago, who said that she had known him for eighteen years and

never heard him make remarks derogatory to the United States or that he wanted Germany to win the war (R. 57-58).

On May 26, 1948, the District Court entered a memorandum opinion containing a detailed analysis of the evidence and questions involved and concluding that at the time he obtained naturalization, petitioner's true allegiance was not to the United States but to Hitler Germany (R. 94-104). On November 4, 1948, in accordance with the court's findings and conclusions (R. 105-106), a judgment was entered vacating the order of November 7, 1946, confirming and reinstating the denaturalization decree of November 24, 1942, and denying petitioner's petition for rehearing (R. 106-107). This judgment was affirmed by the Court of Appeals for the Seventh Circuit (R. 138).

ARGUMENT

Pretermitting the question, which the Court of Appeals decided against petitioner (R. 133-135), whether the District Court had jurisdiction on November 7, 1946, to vacate the denaturalization decree of November 24, 1942 (cf. *Klapprott* v. *United States,* 335 U. S. 601), the only question of any substance presented here is whether there was solid, convincing evidence that petitioner swore falsely and committed a fraud when he obtained his naturalization. That question, we submit, was correctly decided by the two courts below in the light of this Court's decisions in *Schneiderman* v.

*United States,* 320 U. S. 118; *Baumgartner* v. *United States,* 322 U. S. 665; and *Knauer* v. *United States,* 328 U. S. 654.

This Court observed in the *Knauer* case, 328 U. S. at 659, that proof of intent to defraud at the time of naturalization is difficult to establish in the absence of a voluntary confession; but such difficulty does not exist here. In his answer filed on November 24, 1942, to the complaint alleging fraud at the time of naturalization, and in open court, after having been given full and fair opportunity to defend himself by counsel, petitioner voluntarily and with complete awareness of the significance of his action, admitted that at the time he took his oath of allegiance to the United States, he did not intend to renounce absolutely and forever all allegiance and fidelity to the German Reich and was not attached to the principles of the Constitution. This action was wholly consistent with his conduct in the early part of 1942, approximately 16 months after taking his naturalization oath and after the United States had entered the war against Germany and he had been inducted into the Army, when he consistently, voluntarily and determinedly, again completely aware of what he was doing, declared that he would not bear arms against Germany or Japan and would renounce his citizenship rather than do so. It is impossible to believe that his state of mind on a matter of such grave importance was any different when he took

his oath such a short time previously. He further stated that he had always admired Hitler and the Nazi regime and had attended Bund meetings regularly over a period of three years, more than one-half of which preceded his naturalization. The character and objectives of the Bund need no elaboration here to show that petitioner's regular attendance at meetings of that organization and his belief in and admiration for Hitler and the Nazi philosophy were clearly inconsistent with his oath in 1940.

While the evidence of fraud here is not as voluminous as in *Knauer's* case and does not extend over as long a period, still it is equally clear, unequivocal, and convincing. On his own acts and declarations, which the district court found upon an appraisal of the veracity of the witnesses were wholly voluntary (R. 101), petitioner's loyalty was convincingly shown to be with Hitler Germany, not to the United States.

CONCLUSION

The decision below is in accord with the principles enunciated by this Court in the *Knauer, Baumgartner,* and *Schneiderman* cases and there is therefore no occasion for futher review by this Court. For this reason, we respectfully submit that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
*Solicitor General.*
ALEXANDER M. CAMPBELL,
*Assistant Attorney General.*
ROBERT S. ERDAHL,
FELICIA H. DUBROVSKY,
*Attorneys.*

OCTOBER, 1949.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1949 835841 191